

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TEST MASTERS EDUCATIONAL
SERVICES, INC.

Plaintiff,

v.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY

Defendant.

Civil Action No. _____
Jury Demanded

ORIGINAL COMPLAINT

COMES NOW Test Masters Educational Services, Inc. (“Test Masters” or “Plaintiff”) and complains of Philadelphia Indemnity Insurance Company (“Philadelphia” or “Defendant”) as follows:

NATURE OF THE CASE

1. Plaintiff files this Complaint seeking relief against Defendant for damages stemming from Defendant’s refusal to pay numerous unpaid invoices for legal services, which Defendant is obligated to pay under the parties’ insurance policy. Plaintiff seeks its damages for unpaid legal fees and its attorneys’ fees and costs incurred in bringing this action.

JURISDICTION AND VENUE

2. Defendant is subject to jurisdiction in Texas because Defendant contracted to perform services in Texas. Venue is appropriate in the Southern District of Texas, Houston Division because Plaintiff’s principal place of business is in Fort Bend County,

Texas and the parties' contracted for services to be performed in Fort Bend County, Texas.

3. The Court has subject matter jurisdiction because there is complete diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332 and the amount in controversy exceeds \$75,000.00.

PARTIES

4. Plaintiff Test Masters is a Texas corporation and may be served through the undersigned counsel of record.

5. Defendant Philadelphia is Pennsylvania Corporation and may be served with process through its registered agent, CT Corporation Systems, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

STATEMENT OF FACTS

6. Test Masters provides preparation services for students seeking to take standardized tests such as the GMAT, GRE, LSAT, SAT, and ACT.

7. Test Masters brought suit against a third party to enforce its trademark rights that to the name "Test Masters". The third party counter-claimed and sought to divest Test Masters of its trade name. Test Masters prevailed, but the judgment was appealed to the 5th Circuit and all the way to the Supreme Court. *See Test Masters Educ. Servs., Inc. v. Robin Singh Educ. Servs., Inc.*, 799 F.3d 437, 445 (5th Cir. 2015) (the "Underlying Litigation").

8. Pursuant to the parties' insurance policy, Philadelphia tendered a defense to Test Masters for legal fees incurred in defending the counterclaims in the Underlying Litigation.

9. Test Master's incurred over \$600,000.00 in attorneys' fees in defending the claims in the Underlying Litigation. However, to date, Philadelphia has only agreed to pay roughly half of those fees.

10. Despite numerous letters from counsel documenting the reasonableness and necessity of the attorneys' fees and despite having properly segregated those fees, Philadelphia has repeatedly refused to provide payment for the fees and has instead taken a bad faith position on its obligations to pay.

CAUSES OF ACTION

Count 1: Breach of Contract

11. Plaintiff incorporates all paragraphs of this Complaint in this cause of action as though here set out in full.

12. The parties had a valid, enforceable agreement to provide insurance coverage.

13. Plaintiff was ready, willing, and able to perform under the policy and Plaintiff satisfied all conditions precedent under the policy to obtain coverage.

14. The attorneys' fees and costs that Plaintiff seeks coverage for are not excluded from the policy.

15. Defendant has refused to provide coverage for the attorneys' fees and costs and was not excused from performance under the policy.

16. As a result of Defendant's breach of the policy, Plaintiff has been damaged in the amount of approximately \$300,000.00 in unreimbursed attorneys' fees and costs incurred in defending the Underlying Litigation.

17. In addition, Plaintiff seeks its reasonable and necessary attorneys' fees in bringing this action pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code.

CONDITIONS PRECEDENT

18. All conditions precedent to Plaintiff's claims have occurred or have been waived.

JURY DEMAND

19. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- a. awarding actual damages;
- b. awarding reasonable attorneys' fees;
- c. pre and post judgment interests and costs; and
- d. all other relief to which Plaintiff is entitled in law or equity.

Dated: June 15, 2017.

Respectfully submitted,

CAMARA & SIBLEY LLP

/s/ Joseph D. Sibley

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